

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

KAYODE YARD,

Defendant.

DECISION AND ORDER
18-CR-179-A

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On May 14, 2019, the Magistrate Judge filed a Report and Recommendation (Dkt. No. 46) that recommends that defendant Yard's motion to suppress evidence based upon a Fourth Amendment violation (Dkt. No. 27) should be denied. Defendant Yard filed objections (Dkt. No. 52) to the Report and Recommendation, and the United States filed a response (Dkt. No. 62). Oral argument was held on September 4, 2019.

Pursuant to 28 U.S.C. §636(b)(1), the Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. After reviewing the submissions of the parties, having heard oral argument, and upon *de novo* review, it is hereby:

ORDERED that the motion to suppress evidence is denied for the reasons stated in the Report and Recommendation. When a law enforcement officer smelled burnt marijuana at the passenger-side window of the car in which defendant Yard was a passenger, and observed a folded-up, cardboard, Christmas-tree-shaped air freshener stuffed into a dashboard air vent in front of the defendant, reasonable suspicion arose

that justified a temporary detention of the car. And when narcotics-detection dog alerted to narcotics in the area of the trunk of the car a few minutes later, the dog's reliable alert gave the officer probable cause to search the trunk. *Florida v. Harris*, 568 U.S. 237 (2013). The Court has considered all of the defendant's arguments and finds them to be without merit. The defendant's motion to suppress alleged cocaine and other evidence seized during the search of the car in which he was traveling is denied. It is further

ORDERED that the parties shall appear to set a date for trial on September 11, 2019, at 9:00 a.m.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: September 10, 2019